

Service Date: November 22, 1983

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER Of The Application By	)	UTILITY DIVISION
The MOUNTAIN STATES TELEPHONE	)	
AND TELEGRAPH COMPANY (MOUNTAIN	)	
BELL) For Authority To Detariff Ser-	)	DOCKET NO. 82.7.52
vices Offered In Response to Govern-	)	
mental Competitive Bidding. Procedures.	)	ORDER NO. 5032

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT MOUNTAIN BELL:

Lawrence D. Huss and J. Walter Hyer, III, 560 North Park, Helena, Montana 59602

FOR INTERVENOR MONTANA CONSUMER COUNSEL:

James C. Paine, 34 West Sixth Avenue, Helena, Montana 59620

FOR INTERVENOR CENTEL COMMUNICATION COMPANY:

Alan Joscelyn, Gough, Shanahan, Johnson & Waterman, First National Bank  
Building, Helena, Montana 59601

FOR INTERVENOR DATATEL, INC.:

Roger Tippy, Hjort, Lopach & Tippy, P. O. Box 514, Helena, Montana  
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FOR INTERVENOR ROLM INTERMOUNTIAN, INC.:

Ross Cannon, Cannon & Sheehy, 2031 11th Avenue, Helena, Montana  
59601

FOR THE COMMISSION:

Calvin K. Simshaw, Staff Attorney, 1227 11th Avenue, Helena, Montana 59620

BEFORE:

GORDON E. BOLLINGER, Chairman  
JOHN B. DRISCOLL, Commissioner  
HOWARD L. ELLIS, Commissioner  
CLYDE JARVIS, Commissioner  
THOMAS J. SCHNEIDER, Commissioner

BACKGROUND

1. On July 23, 1982, Mountain Bell filed the following proposed tariff provision with the Commission:

Whenever the State of Montana, or any political subdivision thereof, pursuant to the laws of this State, requests a competitive bid or proposal for telecommunication services, the telephone company may respond to the request without regard to the rates for such services otherwise contained in these tariffs for other classes of customers.

2. Following receipt of protests to the proposed tariff, the Commission scheduled the matter for hearing to immediately follow the conclusion of hearings in Docket No. 82.2.8. The hearing was conducted on September 2, 1982 in the Senate Chambers, State Capitol Building, Helena, Montana.

3. Mountain Bell submitted its Memorandum in support of the filing at the conclusion of the hearing. A schedule was established for submission of replies. Datatel, Inc. was the only intervenor that submitted a reply. Mountain Bell filed its Reply Memorandum on October 7, 1982.

DISCUSSION, ANALYSIS AND FINDINGS

4. Only one witness testified at the hearing on this matter. Mr. Robert Ferris, Industry Manager for Mountain Bell, testified as to the recent

history of Mountain Bell's involvement in competitive bids for telecommunications services to state and local government entities. All parties were in basic agreement that this matter involved primarily legal as opposed to factual questions .

5. Mountain Bell offered two basic arguments in support of the proposed tariff. First, it argued that the provision of customer premises equipment is no longer a utility function. Second, it argued that state and local governments do not require protection by another governmental entity from the potential for abuse and market deficiencies beyond the protection already inherent in 18-4-101(3), MCA.

6. The FCC has already ruled that the provision of customer premises equipment is no longer an integral part of utility service and is sufficiently competitive that it should be detariffed. FCC Docket No. 20828, Second Computer Inquiry, 77 FCC 2d 384. The effective date of detariffing the provision of new customer premises equipment (January 1, 1983) has passed since the hearing on this matter. Any continued justification for the proposed tariff as it would relate only to non-CPE services must therefore rest in Mountain Bell's second argument.

7. The Montana Supreme Court has long held that rate regulation is only appropriate where the business to be regulated is affected with a public interest and there are abuses and market deficiencies to be reasonably feared. H. Earl Clark Co. v. Public Service Commission, 94 Mont. 488 (1933). Section 18-4-101(3), MCA, provides:

(3) All purchases, leases, or rentals made or entered into by the department shall be based on competitive bids, except that goods or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the goods or services

are regulated by the public service commission or other government authority.

8. In light of the foregoing, Mountain Bell argues and the Commission agrees that there is no need for the Commission to strictly regulate the rates for a Mountain Bell service provided in response to a competitive bid process conducted by another governmental entity. To the extent that a sufficient competitive market situation exists to facilitate a competitive bid process, there is no need for the Commission to step in to protect another governmental entity from potential abuses or market deficiencies. If a sufficient competitive market situation does not exist, there will be no competitive bid process and Mountain Bell will be required to provide the service at the tariffed rate even though the proposed tariff would be in effect.

9. The Commission finds that no public interest would be served by requiring tariffing of services provided within the narrow confines described in the proposed tariff. In fact, the Commission can perceive potential detrimental impacts to Mountain Bell ratepayers and Montana taxpayers if strict tariffing were required.

10. The Commission concludes that it is in the best interests of Mountain Bell's ratepayers if the Company is allowed to maximize its services and revenues so long as those services are provided at a rate sufficient to cover the direct costs of the service and contribute to the unavoidable common costs of the Company. The inflexibility inherent in the time required for Commission review and approval of tariff changes as well as the public disclosure of such tariffs clearly puts Mountain Bell at a disadvantage to other nonregulated competitive bidders if tariffing is required. This inflexibility could preclude Mountain Bell from the opportunity to provide services that could potentially contribute toward recovery of common costs that will exist regardless of whether the bidded government service is provided by Mountain Bell or not. It is further evident that services provided to government entities by Mountain Bell constitutes a major portion of its revenues. Loss of bids for government services caused by the inflexibility of the tariffing process could result in remaining ratepayers having to pick up a larger portion of nonavoided common costs. This situation should not be allowed to occur in the

governmental competitive bid process where potential abuses and market deficiencies are not present.

11. Allowing circumstances to exist that would preclude Mountain Bell from being an effective bidder would also work to the disadvantage of Montana taxpayers. Clearly the chances of acquiring quality low cost service are enhanced by the addition of each effective competitor. Rather than protecting government entities from potential abuses and market deficiencies, continuing to require Mountain Bell to bid on a tariffed basis would only potentially narrow the field of qualified effective bidders.

12. Intervenor Datatel, Inc. opposed the proposed tariff on the grounds that it would violate constitutional provisions of equal protection both as to Mountain Bell versus other vendors and as to government entities versus all others. The Commission finds that Datatel, Inc. has failed to support those arguments to the degree necessary to meet the heavy burden incumbent on one who challenges the constitutionality of a provision. U.S. v. Reiser, 394 F. Supp. 1060.

13. In approving the proposed tariff the Commission in no way relinquishes its duty to assure that services provided under the new tariff are not subsidized by remaining tariffed services. To this end the Commis-

sion will require that Mountain Bell file with the Commission a copy of the Request for Quote or Proposal as well as Mountain Bell's bid and the resulting contract in each instance where Mountain Bell provides services pursuant to the tariff provision approved herein. This will put the Commission in a position to evaluate whether a full investigation of the costs and revenues underlying the service is required to assure that cross-subsidization is not occurring.

14. In any instance where cross-subsidization is discovered, appropriate adjustments will be made to assure that the shareholders and not ratepayers absorb the amount of the subsidization. Repeat instances will of course be cause for the Commission to review the tariff provision approved herein.

#### CONCLUSIONS OF LAW

1. Applicant, Mountain States Telephone and Telegraph Company is a corporation providing telephone and other communication. services within the state of Montana and as such is a "public utility" within the meaning of § 69-3-101, MCA.

2. The Montana Public Service Commission properly exercises jurisdiction over the Applicant's Montana operations pursuant to Title 69, Chapter 3, MCA.

3. The tariff approved by the Commission herein is just reasonable and not unjustly discriminatory, § 69-3-201, MCA.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. The proposed tariff filed by Mountain Bell on July 23, 1982, relating to services provided to government entities in response to a competitive bidding process is HEREBY APPROVED.

2. Mountain Bell file with the Commission on an ongoing basis the materials described in Finding of Fact No.13.

DONE AND DATED THIS 21st day of November by a vote of 4 - 0.



BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

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THOMAS J. SCHNEIDER, Chairman

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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CLYDE JARVIS, Commissioner

ATTEST:

Madeline L. Cottrill  
Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten days. See 38.2.4806, ARM.